



Agenda Date: 7/12/01

Agenda Item: 4G

## ***STATE OF NEW JERSEY***

### ***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

#### TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF DOMINO )  
NETWORKS COMMUNICATIONS, INC. (N/K/A )  
ZEPHION NETWORKS COMMUNICATIONS, INC.)  
FOR AUTHORITY TO PROVIDE FACILITIES- )  
BASED AND RESOLD LOCAL EXCHANGE AND )  
INTEREXCHANGE TELECOMMUNICATIONS )  
SERVICES THROUGHOUT THE STATE OF )  
NEW JERSEY )

#### ORDER OF APPROVAL

DOCKET NO. TE01010027

(SERVICE LIST ATTACHED)

#### BY THE BOARD:

By letter dated January 8, 2001, Domino Networks Communications, Inc. (Domino), n/k/a Zephion Networks Communications, Inc., filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and interexchange services throughout the State of New Jersey. By letter dated January 8, 2001, Petitioner also requested confidential treatment of the financial data associated with its petition. By letter dated February 21, 2001, Domino informed the Board that on February 1, 2001, Domino Networks Communications, Inc. and its parent company, Domino Networks, Inc. had changed their names to Zephion Networks Communications, Inc. (Petitioner or Zephion) and Zephion Networks, Inc., respectively. In addition, Petitioner responded to a Staff questionnaire by letter dated March 27, 2001 and to Staff interrogatories by letters dated May 10, 2001 and May 21, 2001.

#### BACKGROUND

According to the petition, Zephion was incorporated under the laws of the State of Delaware on November 14, 2000. Petitioner's principal offices are located at 2950 Gallows Road, Falls Church, Virginia 22042. Petition at 2.

Petitioner submitted copies of its Articles of Incorporation, New Jersey Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the petition, Zephion was formed to provide local exchange and interexchange services. Petition at 1. Petitioner advised that Zephion is currently authorized to provide facilities-based and resold local exchange telecommunications services in Colorado, Delaware, Indiana, Kansas, Kentucky, Massachusetts, Minnesota,

Missouri, Nevada, New York, Ohio, Oregon, Rhode Island, South Carolina, Texas, Utah, Washington and Wisconsin. In addition, Zephion is currently authorized to provide facilities-based and resold interexchange services in each of these states, as well as Florida, Georgia and Michigan. May 10, 2001 letter. Zephion has not been denied authority to provide telecommunications services in any state. In addition, Zephion indicates it has no pending civil, criminal or administrative actions against it.

Zephion advised that it is currently considering opting into an interconnection agreement with Verizon New Jersey. March 27, 2001 questionnaire response.

In its petition, Petitioner advised that it seeks authority to provide local exchange and interexchange telecommunications services to business customers throughout New Jersey. Zephion proposes to offer voice and data services, dedicated access services and private line data services. In order to do so, Zephion may use its own facilities, facilities leased from other telecommunications providers, services purchased for resale, or a combination of these. Petition at 7.

Petitioner requested waivers of N.J.A.C. 14:1-4.3 and N.J.S.A. 48:3-7.8, which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. Petitioner requested, in the interest of efficiency and to prevent undue burden, permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petition at 6. Petitioner also requested permission to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Falls Church, Virginia. Petition at 6. Petitioner also stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of these records. May 10, 2001 letter.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 7. Petitioner also asserted that approval of this petition will provide New Jersey customers increased efficiencies and cost savings. Petition at 8.

With regard to its managerial qualifications, Zephion stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 4. Petitioner submitted the professional biographies of its key personnel who, according to Zephion, are well qualified to execute its business plans, and have extensive management and technical experience in the telecommunications industry. Petition at 4, Exhibit C.

Petitioner submitted New Jersey specific pro forma financial statements. May 10, 2001 letter.

The Division of the Ratepayer Advocate by letter dated July 9, 2001 recommended approval of this petition.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. § 151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Zephion's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board.

Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA. The Board APPROVES Petitioner's request for confidential treatment of its financial data.

DATED: 7/13/01

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
CAROL J. MURPHY  
ACTING PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:

(signed)  
FRANCES L. SMITH  
BOARD SECRETARY